



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 28

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**AUG 14 2003**

**OFFICE OF PETITIONS**

In re Application of  
Defourney et al.  
Application No. 08/696,986  
Filed: March 3, 1997  
Attorney Docket No. DBS38

DECISION ON PETITION

This is a decision on the "PETITION UNDER 37 C.F.R. 1.10(e) TO CONSIDER CORRESPONDENCE FILED IN THE PATENT OFFICE ON THE USPS DEPOSIT DATE," filed August 8, 2003.

The petition under § 1.10(e) is **DISMISSED**. However, for the reasons set forth herein, it is concluded that the correspondence is entitled to be considered received on June 8, 2000, the USPS Deposit Date.

The above-identified application became abandoned for failure to timely pay the required issue fee within the statutory period of three (3) months from the mailing date, March 13, 2000, of the Notice of Allowance and Issue Fee Due. No extensions of time are permitted for transmitting issue fees. Accordingly, the above-identified application became abandoned on June 14, 2000. A Notice of Abandonment was mailed on August 7, 2000.

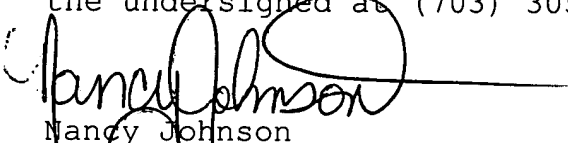
On August 8, 2003, applicants filed the instant petition, asserting that a request for continued prosecution application (CPA) should be considered filed in the Office on June 8, 2000, the date that the CPA was deposited in the USPS pursuant to 37 CFR 1.10. However, the instant petition was filed more than three years after the date petitioner states the CPA was deposited in the Express Mail service of the USPS. 37 CFR 1.10(e)(1) requires that a petition be filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence. The instant petition does not support a conclusion that the three year delay in filing the petition should be considered a prompt filing within the meaning of 37 CFR 1.10(e). Accordingly, the petition under § 1.10(e) is dismissed.

Nonetheless, a review of the application file reveals that notwithstanding the instant petition, applicants are entitled to entry in the record of a continued prosecution application (CPA) filed June 8, 2000. Specifically, a review of the application file reveals that the CPA with an OIPE date of receipt stamp of June 8, 2000 is present in the file of application number 08/696,986. Furthermore, on June 12, 2000, the filing fee for a CPA, and associated fees provided therewith, were processed.

In view thereof, the holding of abandonment for failure to respond to the Notice of Allowance is hereby withdrawn.

The application file is being returned to Technology Center 3673 for entry of the request for continued prosecution application (Paper No. 26) timely filed June 8, 2000.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.

  
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Petitions Attorney  
Office of Petitions